

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11031 of 1994

with

SPECIAL CIVIL APPLICATION No 48 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements? -
2. To be referred to the Reporter or not? - :
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement? -
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? -
5. Whether it is to be circulated to the Civil Judge? : NO
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STATE BANK OF SAURASTHRA

Versus

SD DAVE

Appearance:

1. Special Civil Application No. 11031 of 1994
MR DC RAWAL FOR MR MR ANAND for Petitioner
MS MS SHARMA FOR MR MD RANA for Respondent.
2. Special Civil ApplicationNo 48 of 1995
MS MS SHARMA FOR MD RANA for the petitioner.
MR DC RAWAL FOR MR MR ANAND for Respondent.

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 14/12/1999

ORAL JUDGEMENT

1. Special Civil Application No.11031 of 1994 has been filed by State Bank of Saurashtra against the delinquent workman. Whereas Special Civil Application No. 48/95 has been filed by the delinquent workman against State Bank of Saurashtra for back wages. Hence, both these petitions are being disposed of by this common judgment.

2. Both these petitions arise out of one and the same order dated 21-6-1994 by the Presiding Officer of the Industrial Tribunal (C), Ahmedabad in Reference (ITC) No.12/1988. By the impugned order, the order of dismissal dated 28-6-1979 exh. 36 was set aside and the Managing Director of State Bank of Saurashtra, Head Office, Bhavnagar, was directed to reinstate the delinquent workman Mr. S.D. Dave (hereinafter referred as the delinquent employee) and claim for consequential reliefs of the delinquent employee for back wages was rejected.

3. Mr. S.D. Dave delinquent employee was working as a member of clerical staff in Jamnagar Branch of State Bank of Saurashtra. He was served with the charge sheet by the order dated 6-4-1976 for serious charges involving lack of integrity. The delinquent employee was charge sheeted by the order dated 6-4-1976 for the charges which read as under :

(1) That you have committed an act of gross misconduct inasmuch as you have used your influence by virtue of your employment in the Bank, to secure clean and interest-free loan of Rs.75,000/- in the year 1974-75 from Riddhi Siddhi Engineering Works, a borrower of Bank's Jamnagar (D.P.) branch for various concerns viz. Apollow Industries, R.J. Industries, in which your brother Shri J.D. Dave, is a partner and thus placed yourself under their pecuniary obligation of a person subject to your official authority.

(2) That you have committed an act of gross misconduct inasmuch you have used your influence, by virtue of your employment in the Bank, to secure a clean loan of Rs.3,000/- from Shri Nandlal Hirji Vadher Accountant of one of the Bank's borrowers, Riddhi Siddhi Engineering Works of Jamnagar in 1974, Rs.6,000/- from Smt. Sushila N. Vadher and also Rs.5,000/- from Mrs. B.M. Muchhala, wife of B.M. Muchhala, partner

of Riddhi Siddhi Engineering Works in 1974 for R.J. Industries in which your brother Shri J.D. Dave is a partner, and thus placed yourself under pecuniary obligation to those who are subject to your official authority.

(3) That you have committed an act of gross misconduct inasmuch as you have used your influence by virtue of your employment in the Bank to secure two loans of Rs.5,125/- each from Shri Girdharlal M. Bhatha and Mrs. Pushpaben Girdharlal Bhatha of Jamnagar on 21-4-1976 and 15-4-1976 respectively for R.J. Industries and Apollo Industries in which your brother, Shri J.D. Dave, is a partner and you stood as 'guarantor' for the said loan amount guaranteeing the payment of two cheques bearing No. 631040 and 631613 dated the 15th and 21st April 1975 respectively both for Rs.5,125/1 without obtaining any permission from the Bank and you have incurred the said liability and thus you have committed an act of prejudicial to the interest of the Bank.

(4) That you have committed an act of gross misconduct inasmuch as you have used your influence, by virtue of your employment in the Bank and secured a loan of Rs.6,000/- from one Smt. Taragauri Chandulal Upadhyaya of Jamnagar in the year 1975 for one R.J. Industries in which your brother J.D. Dave, is a partner and thus misused your position as an employee of the Bank.

(5) That you have transferred the ownership of the scooter No.GJP/699 which you had purchased with the Bank's assistance under the Bank's scooter loan scheme and hypothecated the same with the Bank, to one Shri Dineshchandra Ramniklal Katarmal on 26-4-1974 without liquidating the Bank's finance granted for the purchase and thus you have misused the Bank's facility granted to you and that too in contravention of the terms and conditions prescribed under the scheme and documents executed for the purpose and thus you have committed an act of gross misconduct.

(6) That you had remained on authorized absence by overstaying your leave without prior permission from 30-8-1976 to 10-9-1975 and

subsequently did not report for duty though you have been asked to do so and as such you had committed an act of wilful insubordination and disobedience of management's lawful and reasonable order and thus you have committed an act of gross misconduct.

AND thereby rendered yourself liable, if found guilty, to the punishment in clause No. 19.6 of Chapter XIX of the Bipartite Settlement entered into between the State Bank of Saurashtra and State Bank of India and Subsidiary Banks "Employees Union".

4. Departmental inquiry was held against the delinquent employee and he was given second show cause notice dated 13-1-1978 after completion of the departmental inquiry. The delinquent employee was held guilty of the charges and was dismissed from service by the order dated 28-6-1979. The dismissal was challenged and reference was made by the Central Government as Reference (I.T.C.) No. 12 of 1988. By the order dated 21-6-1994 the Tribunal directed the Bank to reinstate the delinquent employee in service without any back wages. The delinquent official has filed Spl. C.A. No. 11031 of 1994 challenging the award of the Tribunal to the extent of refusal of back wages.

5. Heard learned counsel for the parties and perused the relevant papers on record. Learned counsel for the Bank has also filed the written statement. The main contention of the learned counsel of the Bank Authority is that the findings of the Tribunal are arbitrary, perverse and contrary to the evidence on record and also contrary to the Tribunal's preliminary award. The Tribunal held the departmental inquiry as to whether without giving any opportunity or without following any legal procedure is justified or not. The Tribunal by the preliminary award dated 8-2-1993 held that no injustice has been done to the concerned employee Shri Dave. So far as the departmental inquiry and procedure adopted by the Bank are concerned, the departmental inquiry conducted by the Bank is held by taking into the consideration the principles of natural justice and it appears to be just and reasonable and hence the question was decided.

6. Learned counsel for the Bank authority submitted that after about nine years the delinquent official approached the Tribunal to challenge the dismissal order. The Tribunal committed error in entertaining delayed

challenge and the questions of gross delay and latches have not been considered by the Tribunal at all while dealing with the award of the Labour Court. So far Charge No. 1 is concerned, the complaint of the complainant and the evidence of other witnesses are on record. Hence, no question of cross-examination of Mr. Muchhala arises and there is no finding by the Tribunal that any prejudice was caused to the delinquent official of non-examination of Mr. Muchhala. Hence, the charge having been proved and so it cannot be said that the charge is untenable. So far as charge no. 2 is concerned, the Tribunal failed to see that the absence of loss to the Bank did not diminish the seriousness and gravity of the charge. The finding of the Tribunal that no pecuniary loss has been caused to the Bank and hence the charge only amounts to irregularity is perverse, arbitrary and not sustainable in the eye of law. The third charge has been quashed and set aside by the Tribunal on the ground that it is vague and does not constitute any act of misconduct because the Bank has not suffered any pecuniary loss and the finding of the Tribunal is without evidence. The finding of the Tribunal that the behaviour of the Bank employee show that only childness or irregular behaviour when he was abusing his position in manipulating the customers to giving clean loans for his brother's business and when he was standing as guarantor in violation of service conditions of the Bank. With regard to the charge no.4 the Tribunal has not recorded any finding. Hence, it will be deemed that the charge no. 4 has been established as proved against the employee. In respect of charge no. 5, it is stated that the petitioner mortgaged his scooter for which he had taken Bank's loan and without satisfying the loan he transferred the scooter to some other person. The observations made by the Tribunal in this regard are not sustainable and the Tribunal has not examined the evidence on record and came to the conclusion that the charge No.. 5 has not been proved. So far as unauthorized absence and insubordination and disobedience in respect of the charge no. 6 is concerned, the petitioner employee remained absent unauthorizedly for 10 days and he was guilty of insubordination and disobedience of lawful orders of the charge. The Tribunal without applying its mind to the evidence on record held that the charge against the employee has not been proved. Though the delinquent employee sent an application after 10th September, 1975 and he remained absent unauthorizedly from 30-8-1975 to 10-9-1975, the management has rejected that application and directed the delinquent employee to resume duty immediately even though he has not resumed his duty. The

charge was proved but the Tribunal held that absence does not constitute any misconduct particularly unauthorized absence is considered misconduct under the Bank's Rules for Award Staff Rule 19.5 read with Rule 19.7.

7. Learned counsel for the Bank further submitted that the delinquent employee is in the habit of harassing the customers and manipulating them by getting clean loans for interest free loans from them. The behaviour of the delinquent employee being irresponsible would amount to misconduct and the customers will loose faith in such Bank and the Bank is justified in loosing confidence in such bank employee who was harassing the customers to manipulate them into giving him private interest free loans, misusing the scooter loans facility given to him, remaining absent unauthorizedly for a long spell and disobedience of the directions of the Bank authority to remain present on duty. It is also contended that the Tribunal has no jurisdiction to appreciate the evidence on record and to come to different findings from the findings of the disciplinary authority. He has relied upon the various judgments of this Court as well As Supreme Court of India including 1995 (6) SCC 749, AIR 1974 SC696, 1986 (2) GLR 1143, 1994 (1) SVLR 53 and 1960 (1) LLJ 167.

8. In the case of Union of India and Another Vs. B.C. Chaturvedi reported in 1995 (6) SCC 749, it has been held as under :

"The disciplinary authority and on appeal the appellate authority, being fact finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute their own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary /appellate authority to reconsider the penalty imposed , or shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

9. In the case of The East India Hotels Vs. Their

Workmen and others, reported in AIR 1974 SC 696, it has been held as under :

"Once misconduct is proved, either in the enquiry conducted by the employer or by the evidence placed before the Tribunal the punishment imposed cannot be interfered with by the Tribunal except in cases where the punishment is harsh and oppressive."

10. In the case of State Bank of India and others Vs. Samarendra Kishorendow & Another, reported in SVLR 53, wherein the High Court has relied on the view taken in the case of Orissa and others V. Bidyabhushan Mohapatra reported in AIR 1963 SC 779 in which it has been held that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Inquiry Officer or the competent authority where they are not arbitrary or utterly perverse. Learned counsel for the Bank authority also contended that it is well settled rule of law that the pecuniary loss to any of the authority even the Bank authority is not required to be considered in inflicting punishment.

11. On the contrary learned counsel for the delinquent employee contended that on the basis of the evidence on record no charge is proved against the delinquent employee. In the present case, one party gives loan to the other party and the delinquent employee happens to be the brother of one partner of the second party. The first party as well as second party are customers of the Bank where the delinquent employee is working as a clerk. The delinquent employee has no concern if there is any transaction between the first party and second party. Money transaction takes place between the first party and second party and both the parties were customers of the bank authority and the delinquent employee happens to be the brother of one of the partners of second party. The only allegation against the delinquent employee is that the delinquent employee persuaded the first party to give loan clean and interest free loan to second party. In one of the loan the delinquent employee has stood as guarantor and he signed as a guarantor to repay the loan to the party concerned which was given to the second party. This conduct does not amount to misconduct at all. So far as charge No. 5 in respect of unauthorized absence, the delinquent employee was on leave till 29th August, 1976 and he suddenly fell ill and sent an application for

grant of leave and to extend leave from 30-8-199 to 10-9-1978. It is not disputed by the Bank authority that the application sent by the delinquent official was received. Only it is disputed that the application was received on 10th September 1978. As such it is prevalent in the department of the Government as well as in the other Government offices that if any employee falls sick then the application can be sent on the date of sickness and even on the date of recovery from the sickness. The application for leave can be presented even after recovery from the illness. As such, no charge of unauthorized absence is proved. So far as charge no. 6 is concerned, the delinquent employee has paid all the installments to the Bank before the charge sheet was submitted against him. Even if it is assumed that the charges no. 5 and 6 have some significance, they are technical nature and they can be ignored or neglected by any authority including the Tribunal and the Tribunal after going through the entire proceedings and the evidence on record, recorded the findings that no charge is proved against the delinquent employee and the delinquent employee is not held guilty for misconduct as alleged by the disciplinary authority or by the appellate authority. As the charges levelled against the delinquent employee were not proved, the delinquent official is entitled to the back wages.

12. Learned counsel for the delinquent employee further contended that the Tribunal has special power u/s 11A of the Industrial Disputes Act to reverse the findings recorded by the disciplinary authority or the appellate authority and in the present case after going through the entire records and proceedings and the evidence on record, the Tribunal has come to the conclusion that no charge is proved and the award of the Tribunal is fully justified in this respect. As no charge has been proved against the delinquent employee he is also entitled to the back wages. In this connection, the Tribunal has committed error in not granting back wages when it has come to the conclusion that no charge is proved against the delinquent official.

13. Learned counsel for the delinquent official has further submitted that back wages have not been awarded to the delinquent employee by the Tribunal only on the ground that the delinquent employee has adopted wrong forum and he ought to have come directly to the labour court instead of filing civil suit and after decision of the civil suit he filed appeal before the appellate court and the appellate court returned the plaint to present the same before the appropriate forum. Thereafter, the

delinquent employee has prosecuted the present proceedings. It is a fact that the Bank authority has not filed any paper regarding the disciplinary proceedings nor the report of the disciplinary authority nor the delinquent employee has filed those papers before this Court. Learned counsel for the delinquent employee has also not produced the proceedings and the findings of the disciplinary authority before this Court. As such, I am unable to see the records and proceedings of the departmental inquiry conducted by the disciplinary authority as well as the inquiry report. Hence, I cannot make any observation in respect of the departmental inquiry proceedings and the inquiry report of the disciplinary authority. It is true that the contention of the learned Counsel for the Bank authority that the Tribunal or the High Court in judicial review should not interfere with the findings recorded by the disciplinary authority or the appellate authority. But in the judicial review if the Court comes to the conclusion that the findings recorded by the disciplinary authority are perverse the High Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

14. Section 11-A of the Industrial Disputes Act, reads as under :

"The power of the labour courts and National Tribunals and National Tribunal to give proper relief in case of discharge or dismissal of workman :

Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it

thinks fit or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require.

Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter."

15. Insertion of Section 11A in the Industrial Disputes Act, gives unfettered power to the tribunal to set aside the discharge or dismissal of any workman. But that power has been made limited by the case law of the High Court and Apex Court and it has been settled that the Tribunal will not exercise such power arbitrarily or where the procedure adopted in the proceedings is inconsistent with the procedure provided by the rules therefor and the findings recorded are not perverse or unreasonable. It is clear that the Tribunal has been given this power u/s 11A of the Industrial Disputes Act for complete or substantial justice to the parties concerned. The Legislature has thought that the Supreme Court has power under Article 142 of the Constitution and the Tribunal has no power to cause substantial or complete justice to the parties. Hence, the provisions of Section 11A were inserted in the Industrial Disputes Act. Perhaps it is also considered by the Legislature that the High Court has wide power under Article 226 of the Constitution to give complete or substantial justice to the party concerned. Hence, no provision has been made in this respect in the Constitution or by any enactment for the High Court.

16. Learned counsel for the delinquent employee contended that from the evidence on record no charge has been proved and made out against the delinquent employee as the certain persons were customers of the Bank authority. One customer requested the other customer to give loan and if such loan has been given then the delinquent employee has no concerned being an employee of the Bank authority. Only he happens to be the brother of one part of the second party. It is observed by the Tribunal that the employee's conduct in standing as a guarantor is childish behaviour of the bank employee and that should not be done by him and no pecuniary loss has been caused to any of the parties. As such, the charge is not proved against the delinquent official. First of all, I see that in the present case charges no. 1 to 4

relates to loans granted by some of the persons including the firms. But other firms including the firm where the petitioner - delinquent employee's brother was a partner of that firm. In case, two parties or customers negotiate to take or to give loan and that transaction is limited between two parties, the delinquent employee has no concern. It is alleged that the delinquent employee has concern except that he happens to the brother of one part of second party and use his influence over the first party to give loan to the second party where the delinquent employee's brother was a partner of the second party. The whole record of the departmental proceedings and inquiry report were before the Tribunal and the Tribunal after considering the evidence on record came to the conclusion that the charges no. 1 to 4 have not been proved though from the award of the Tribunal it appears that the Tribunal has not given any finding in respect of the charges no. 1 to 4. As it appears that it is an inadvertence on the part of the Tribunal that no finding has been recorded as the nature of charges no. 1 to 4 is one and the same. As such, the Tribunal has also recorded reasons after going through the evidence on records and proceedings that the main witness Bakul Muchhala who made complaint to the Bank authority was not examined at all to prove the charges against the delinquent employee. The delinquent employee had no opportunity to examine or cross-examine the proposed witness Bakul Muchhala. It is also observed by the Tribunal in its award that it is futile to recollect on plain reading of charges no. 1 and 2, it shows some sort of irregularity on the part of the workman Shri Dave, while discharging his duty as a clerk in the first party-Bank and there was no pecuniary loss nor any gainful profit which was enjoyed or earned by the concerned workman. In respect of the charge no. 3 it is observed by the Tribunal in its award that the delinquent employee had stood as guarantor for the loan and thus making himself as a guarantor is not misconduct in any rule. At the most, that would amount to some childishness or irregular behaviour while discharging his duty in the Bank.

17. Regarding charge no. 5, the scooter was subsequently hypothecated with the Bank sold to one Shri Dineshchandra Ramniklal Katarmal on 25-4-1974 without liquidating the Bank's finance granted for the purchase of the said scooter. In this respect, the Tribunal has observed that the Bank has not examined any responsible officer including the main witness Shri Bakul Muchhala to show that the employee was involved in that transaction. It is, however, pointed out by the learned counsel for

the delinquent employee that the loan has already been repaid before submission of the charge sheet. No doubt, if some irregularity has been committed even without liquidating the amount that irregularity cannot be said to be misconduct. In the present case, the observation of the Tribunal is that the main witness and the responsible officer has not been examined by the Bank in order to prove this charge against the employee. Even if it is assumed that any irregularity has been committed by the employee that would amount to technical irregularity which cannot be said to be punishable with dismissal.

18. In so far as charge no. 6 is concerned wherein the petitioner is said to have been remained unauthorized absence and without prior permission of the Bank. This charge has been dealt with and the Tribunal has recorded the finding that some leave application was also submitted by the petitioner for the purpose of sanction of leave and that fact was not disputed by the other side. It appears that the application submitted by the employee was before the Tribunal and the Tribunal after going through the evidence came to the conclusion that the petitioner fell ill and the application for sanction of leave was given after recovery of his illness and it appears that in the prevalent situation such applications are entertained and the leave is sanctioned even if the application is given after recovery of illness. As such, the Tribunal came to the conclusion that behaviour of the delinquent employee for remaining absent from work does not constitute an act of misconduct. It also appears that overstaying is not considered as misconduct. As such, the finding of the Tribunal is that no charge is made in this respect. The Tribunal has also examined the record and proceedings which was before it and the Tribunal found that leading questions were put to the witness by the Bank authority and possible answers were attempted to be taken by the Inquiry Officer and the Bank has not examined responsible person like Bakul Muchhala in order to prove the charges levelled against the employee.

19. As such, the findings recorded by the Tribunal though the findings are not sound language but they have been recorded after going through the entire record and proceedings of the departmental proceeding. The award of the Tribunal has not be described in the healthy manner and is not sound in letters. But the findings recorded by the Tribunal cannot be set aside on the ground that the reasons have not been recorded in good description for setting aside the punishment of dismissal. The Tribunal has applied its mind and found certain

irregularities proved. As such non-examination of the main witness - complainant and other witnesses though the rule of evidence is not applicable in order to substantiate the fact that the main witness (complainant) is required to be examined during the inquiry though it is a fact but that is necessary. But the learned counsel for the delinquent employee made it clear from the complaint of Bakul Muchhala that certain amount of loan has not been repaid by the brother of the delinquent official. As such, it appears from the records and proceedings that the Tribunal was fully justified that the charges levelled against the delinquent official were not sustainable in the eye of law and the findings recorded by the Inquiry Officer were perverse and not sustainable in the eye of law. I do not find any reason to disturb the findings recorded by the Tribunal. Accordingly, the petition filed by the Bank authority is liable to be dismissed. So far as the claim of the delinquent employee for back wages is concerned in the other petition filed by the delinquent employee, the Tribunal has come to the conclusion that the delinquent employee has adopted wrong forum for long period and in the present case he took time for about nine years in adopting the present proceedings. As such, the delinquent employee is not entitled for back wages. Hence, the petition filed by the delinquent employee is also liable to be dismissed. In this respect, the learned counsel for the delinquent employee has relied on the case of S.M. Saiyad Vs. Baroda Municipal Corporation, reported in AIR SC 1829, wherein it has been held as under :

"The denial of back wages for a portion of period for the reason that he was prosecuting remedy in a wrong forum would not be a relevant consideration for refusal of back wages."

20. In the case law cited by the learned counsel for the delinquent official the period exhausted in wrong forum was from December 12, 1969 to October 26, 1976 i.e. for short period. Whereas in the present case, the period exhausted in wrong forum is of 9 years and in my opinion the same should not be allowed for back wages. Accordingly, both these petitions are dismissed. Interim relief, if any, stands vacated, in both the petition.

21. In the last, learned counsel for the Bank Authority requested this Court to stay the operation and implementation of this order for a period of two weeks. I do not find any good reason in the request made by the

learned counsel for the Bank Authority and accordingly,
the request for stay of this order for the period of two
weeks, is refused.

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/JVSatwara/